

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SENTIUS INTERNATIONAL, LLC,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Case No. 5:13-cv-00825-PSG

**OMNIBUS ORDER RE: MOTIONS
TO SEAL**

(Re: Docket Nos. 145, 149, 151, 153, 161)

Before the court are five administrative motions to seal 44 documents. “Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’”¹ Accordingly, when considering a sealing request, “a ‘strong presumption in favor of access’ is the starting point.”² Parties seeking to seal judicial records relating to dispositive motions bear the burden of overcoming the presumption with “compelling reasons” that outweigh the general history of access and the public policies favoring disclosure.³

¹ *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n. 7 (1978)).

² *Id.* (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)).

³ *Id.* at 1178-79.

1 However, “while protecting the public's interest in access to the courts, we must remain
 2 mindful of the parties' right to access those same courts upon terms which will not unduly harm
 3 their competitive interest.”⁴ Records attached to nondispositive motions therefore are not subject
 4 to the strong presumption of access.⁵ Because the documents attached to nondispositive motions
 5 “are often unrelated, or only tangentially related, to the underlying cause of action,” parties moving
 6 to seal must meet the lower “good cause” standard of Rule 26(c).⁶ As with dispositive motions, the
 7 standard applicable to nondispositive motions requires a “particularized showing”⁷ that “specific
 8 prejudice or harm will result” if the information is disclosed.⁸ “Broad allegations of harm,
 9 unsubstantiated by specific examples of articulated reasoning” will not suffice.⁹ A protective order
 10 sealing the documents during discovery may reflect the court’s previous determination that good
 11 cause exists to keep the documents sealed,¹⁰ but a blanket protective order that allows the parties to
 12 designate confidential documents does not provide sufficient judicial scrutiny to determine whether
 13 each particular document should remain sealed.¹¹

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 15 In addition to making particularized showings of good cause, parties moving to seal
 16 documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to
 17 Civ. L.R. 79-5(b), a sealing order is appropriate only upon a request that establishes the document
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19 ⁴ *Apple Inc. v. Samsung Electronics Co., Ltd.*, 727 F.3d 1214, 1228-29 (Fed. Cir. 2013).

20 ⁵ *See id.* at 1180.

21 ⁶ *Id.* at 1179 (internal quotations and citations omitted).

22 ⁷ *Id.*

23 ⁸ *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002);
 24 *see* Fed. R. Civ. P. 26(c).

25 ⁹ *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992).

26 ¹⁰ *See Kamakana*, 447 F.3d at 1179-80.

27 ¹¹ *See* Civ. L.R. 79-5(d)(1)(A) (“Reference to a stipulation or protective order that allows a party to
 28 designate certain documents as confidential is not sufficient to establish that a document, or
 portions thereof, are sealable.”).

is “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under the law.” “The request must be narrowly tailored to seek sealing only of sealable material, and must conform with Civil L.R. 79-5(d).”¹² “Within 4 days of the filing of the Administrative Motion to File Under Seal, the Designating Party must file a declaration as required by subsection 79-5(d)(1)(A) establishing that all of the designated material is sealable.”¹³

With these standards in mind, the courts rules on the instant motion as follows:

<u>Motion to Seal</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reason/Explanation</u>
145	Opposition to Defendant’s Daubert Motion to Exclude Testimony of Sentius’ Survey Expert, Dr. William Wecker	<ul style="list-style-type: none"> • Page 7:10-11: “would have...revenue” SEALED • All other designations UNSEALED 	Only sealed portions narrowly tailored to confidential business operations.
145	Exhibit C (Docket No. 145-8)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
145	Exhibit D (Docket No. 145-9)	<ul style="list-style-type: none"> • ¶¶ 146-147 SEALED including: <ul style="list-style-type: none"> ▪ Chart on page 88 SEALED ▪ Footnotes SEALED • Pages 90-103 UNSEALED • ¶ 176 – end of page 108 SEALED except: <ul style="list-style-type: none"> ▪ ¶ 176 “The income... combination thereof.” UNSEALED 	Only sealed portions narrowly tailored to confidential business information.
145	Exhibit M (Docket No. 145-10)	UNSEALED	No declaration in support filed with the court as required by

¹² Civ. L.R. 79-5(b). In part, Civ. L.R. 79-5(d) requires the submitting party to attach a “proposed order that is narrowly tailored to seal only the sealable material” which “lists in table format each document or portion thereof that is sought to be sealed,” Civ. L.R. 79-5(d)(1)(b), and an “unredacted version of the document” that indicates “by highlighting or other clear method, the portions of the document that have been omitted from the redacted version.” Civ. L.R. 79-5(d)(1)(d).

¹³ Civ. L.R. 79-5(e)(1). The Civil Local Rules have recently been amended shortening the time available to the designating party to file a supporting declaration from seven days to four days. As this rule change was only recently implemented the court applies the prior form of Civ. L.R. 79-5 for the purposes of this order.

			Civ. L.R. 79-5(e)(1).
149	Opposition to Defendant's Motion to Phase Trial	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
149	Exhibit A (Docket No. 149-7)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
149	Exhibit B (Docket No. 149-8)	SEALED	Narrowly tailored to confidential business information.
151	Opposition to Defendant's Motion for Summary Judgment of No Infringement	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
151	Exhibit 1 (Docket No. 151-7)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
151	Exhibit 2 (Docket No. 151-9)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
151	Exhibit 3 (Docket No. 151-11)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
151	Exhibit 4 (Docket No. 151-13)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
151	Exhibit 5 (Docket No. 151-15)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
151	Exhibit 6 (Docket No. 151-17)	UNSEALED	Declaration as filed insufficient to support sealing under Civ. L.R. 79-5(d)(1)(A).

1	151	Exhibit 8 (Docket No. 151-20)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
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3	151	Exhibit 9 (Docket No. 151-22)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
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6	151	Exhibit 10 (Docket No. 151-24)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
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9	151	Exhibit 11 (Docket No. 151-26)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
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11	151	Exhibit 12 (Docket No. 151-28)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
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14	151	Exhibit 13 (Docket No. 151-30)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
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17	151	Exhibit 14 (Docket No. 151-32)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
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19	151	Exhibit 15 (Docket No. 151-34)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
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22	151	Exhibit 16 (Docket No. 151-36)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
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25	151	Exhibit 17 (Docket No. 151-38)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
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27	151	Exhibit 61 (Docket No. 151-83)	UNSEALED	Declaration as filed insufficient to support sealing under
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			Civ. L.R. 79-5(d)(1)(A).
151	Exhibit 62 (Docket No. 151-85)	UNSEALED	Declaration as filed insufficient to support sealing under Civ. L.R. 79-5(d)(1)(A).
151	Exhibit 66 (Docket No. 151-90)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
151	Exhibit 67 (Docket No. 151-92)	UNSEALED	Declaration as filed insufficient to support sealing under Civ. L.R. 79-5(d)(1)(A).
151	Exhibit 68 (Docket No. 151-94)	UNSEALED	Declaration as filed insufficient to support sealing under Civ. L.R. 79-5(d)(1)(A).
151	Exhibit 69 (Docket No. 151-96)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
151	Exhibit 70 (Docket No. 151-98)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
151	Exhibit 71 (Docket No. 151-100)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
151	Exhibit 72 (Docket No. 151-102)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
151	Exhibit 73 (Docket No. 151-104)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
151	Exhibit 74	UNSEALED	No declaration in support filed with the

	(Docket No. 151-106)		court as required by Civ. L.R. 79-5(e)(1).
151	Exhibit 75 (Docket No. 151-108)	UNSEALED	Declaration as filed insufficient to support sealing under Civ. L.R. 79-5(d)(1)(A).
151	Declaration of Vijay Madisetti in Support of Opposition to Defendant's Motion for Summary Judgment of No Infringement	UNSEALED	Not narrowly tailored to confidential business information.
151	Exhibit A (Docket Nos. 151-112 to 151-116)	UNSEALED	Not narrowly tailored to confidential business information.
153	Memorandum of Law in Opposition to Defendant's Daubert Motion to Exclude Testimony or Sentius' Damages Expert, Robert Mills	<ul style="list-style-type: none"> • Page 3:22-4:1 SEALED • Page 6:13-28 (including footnotes 1-3) SEALED • Page 11:20-28 (footnote 7) SEALED • Page 4:23-24 SEALED • Page 5:2-3 "Dividing" until "After thoroughly" SEALED • Page 19:2 SEALED • All other designations UNSEALED 	Only sealed portions narrowly tailored to confidential business information.
153	Exhibit A (Docket No. 153-9)	UNSEALED	Not narrowly tailored to confidential business information.
153	Exhibit B (Docket No. 153-10)	<ul style="list-style-type: none"> • Pages 79:24-80:40 SEALED • Page 97:13-14 SEALED • Page 98:6-11 SEALED • All other designations UNSEALED 	Only sealed portions narrowly tailored to confidential business information.
153	Exhibit C (Docket No. 153-11)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
161	Defendant's Reply in Support of its Daubert Motion to Exclude Testimony of Sentius' Damages Expert, Robert	All designations highlighted in yellow SEALED	Narrowly tailored to confidential business information.

	Mills		
161	Exhibit AN (Docket No. 161-6)	All designations highlighted in yellow SEALED	Narrowly tailored to confidential business information.

SO ORDERED.

Dated: January 15, 2015


 PAUL S. GREWAL
 United States Magistrate Judge

United States District Court
 For the Northern District of California